

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ELIZABETH CARRINGTON a/k/a	§	
CANDY MASHBURN,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 16-2808
	§	
CARMAX AUTO SUPERSTORES, INC.,	§	
Defendant.	§	

NOTICE OF REMOVAL

Defendant, CARMAX BUSINESS SERVICES, LLC d/b/a CARMAX AUTO FINANCE¹ ("CarMax"), hereby removes the state court action described below to this Court pursuant to 28 USC §§ 1332 and 1441, *et seq.*

BACKGROUND

1. On May 19, 2016, Plaintiff, ELIZABETH CARRINGTON a/k/a CANDY MASHBURN ("Plaintiff"), filed suit in the 189th Judicial District Court of Harris County, Texas, entitled "*Elizabeth Carrington a/k/a Candy Mashburn v. CarMax Auto Superstores, Inc.*" bearing Cause No. 2016-33127, ("the state court action"), against CarMax Auto Superstores, Inc. rather than CarMax Business Services, LLC d/b/a CarMax Auto Finance.

2. CarMax was served on August 18, 2016, incorrectly named as CarMax Auto Superstores, Inc. CarMax filed its answer on September 12, 2016.

3. In *Plaintiff's Original Petition* (the "Petition"), which remains her live pleading in this case, Plaintiff asserted claims for violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §227, *et seq.*

¹ Plaintiff filed suit against and served CarMax Auto Superstores, Inc. However, the entity with whom Plaintiff communicated regarding her automotive loan was CarMax Business Services, LLC d/b/a CarMax Auto Finance.

4. This Notice of Removal is timely under 28 U.S.C. §1446(b), as this matter has been removed less than thirty (30) days after the first date that CarMax knew or should have known of facts making this suit removable.

BASIS FOR REMOVAL – FEDERAL QUESTION

5. The state court action is one which may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446.

6. The case is removable pursuant to 28 U.S.C. §1441(b) which provides in relevant part:

Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties.

7. Plaintiff asserts that CarMax violated consumer protection laws. Specifically, Plaintiff asserts that CarMax violated the TCPA, which involves a federal question.

VENUE

8. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the location of the state court in which the removed action has been pending.

DOCUMENTS INCLUDED IN NOTICE OF REMOVAL

9. As required by 29 U.S.C. § 1446(a), the following documents are attached and filed herewith:

Exhibit “A”: INDEX OF MATTERS BEING FILED;

Exhibit “B”: STATE COURT’S FILE including a true and correct copy of all process, court docket sheet, pleadings asserting causes of action, answers and any orders signed by the state court judge:

B-1:	Plaintiff’s Original Petition	05/19/2016
B-2:	Civil Case Information Sheet	05/19/2016

B-3:	Civil Process Request	05/19/2016
B-4:	Certified Mail Receipt	08/15/2016
B-5:	Domestic Return Receipt	08/18/2016
B-6:	Original Answer of CarMax Business Services, LLC	09/12/2016

Exhibit "C": LIST OF COUNSEL OF RECORD, including addresses, telephone numbers and parties represented; and

Exhibit "D": CERTIFICATE OF INTERESTED PARTIES.

CONCLUSION

10. CarMax properly and timely filed this Notice of Removal based on federal question. CarMax will promptly file a copy of this Notice of Removal with the clerk of the state court in which the action has been pending.

WHEREFORE, Defendant, CARMAX BUSINESS SERVICES, LLC d/b/a CARMAX AUTO FINANCE, prays that this cause proceed in this Court as a properly removed action.

Respectfully submitted,

HUGHES WATTERS ASKANASE, L.L.P.

/s/ Sabrina A. Neff

Sabrina A. Neff

TBN: 24065813

Total Plaza

1201 Louisiana Street, 28th Floor

Houston, Texas 77002

(713) 759-0818 – Phone

(713) 759-6834 – Fax

sneff@hwa.com

ATTORNEYS FOR DEFENDANT
CARMAX BUSINESS SERVICES, LLC d/b/a
CARMAX AUTO FINANCE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of September, 2016, a true and correct copy of this Notice of Removal was served as follows:

David A. Fernandez *Via ECF: davidafernandezlawoffice@mcom.com*
Law Office of David A. Fernandez, PC
2190 N. Loop West, Suite 102
Houston, Texas 77018
Counsel for Plaintiff

/s/ Sabrina A. Neff
Sabrina A. Neff